Supreme Court of the United States

October Term, 1974

No. 74-1032

SCOTT HUDGENS, AN INDIVIDUAL,
Petitioner,

v.

LOCAL 315, RETAIL AND WHOLESALE DEPARTMENT STORE UNION, AFL-CIO,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

Memorandum For Local 315 RWDSU

On March 17, 1975 this Court granted the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit in *Scott Hudgens* v. *National Labor Relations Board & Local 315, Retail and Wholesale Department Store Union,* No. 74-773. In that case the Fifth Circuit enforced a Board determination that Hudgens, the owner of the North DeKalb Shopping Center in suburban Atlanta, Georgia, violated § 8(a)(1) of the National Labor Relations Act. That violation occurred when Hudgens threatened to have four warehouse employees of the Butler Shoe Company arrested if they continued their peaceful picketing of two entrances to Butler's store located inside the Center in support of Local 315's lawful strike against Butler (which had lasted a ½ hour). The pickets reacted

to Hudgens threat by departing the area and Local 315 then filed an unfair labor practice against Hudgens with the National Labor Relations Board alleging unlawful interference with concerted activity protected by § 7 of the NLRA. (See Pet. in No. 74-773, pp. A1-A3.) Thus, this Court has already agreed to decide whether the NLRB and the Fifth Circuit were right in concluding that Hudgens' prohibition of Local 315's peaceful picketing at the entrances to Butler's Shopping Center store violated § 8(a)(1) of the NLRA.

After Local 315 filed its § 8(a)(1) charge, the instant state court case was instituted by Hudgens. It is a declaratory judgment action in which a declaration is sought that picketing of the entrances to Butler's Shopping Center store by Local 315 in support of its strike would be in violation of Georgia's Criminal Trespass Statute. The Court of Appeals of Georgia affirmed the Trial Court's judgment in favor of Local 315 since "the litigation with the union was still going on in the Federal jurisdiction prior to the filing of [this] superior court action and * * * the N.L.R.B. had there ruled that the picketing here complained of was a protected activity under the Federal Act and had also held that the threat to arrest the pickets for criminal trespass was an unfair labor practice * * *." (Pet. in No. 74-1032, pp. A10-A11.) Thus, the question in this case is whether the Georgia courts were right in concluding that under the circumstances here after the NLRB had asserted jurisdiction the State was without jurisdiction to determine the legality of the very conduct at issue in the Board case.

It is our firm conclusion that the answer the Georgia courts gave to that question is right. If this matter had come before the Court in the ordinary course we would, therefore, have filed a brief in opposition. But we recognize

that two questions noted above are closely brigaded, and that both are equally important and recurring. Since the Court has granted certiorari to consider the substantive issue of federal labor law, we believe that the instant case provides the proper occasion for considering also the companion issue of the metes and bounds of federal and state jurisdiction. For, joint briefing and argument of both questions will provide the Court with the fullest possible appreciation of and insight into what is in essence a single problem.

CONCLUSION

For the above stated reasons the petition for a writ of certiorari to the Court of Appeals of Georgia should be granted, and the instant case should be set for argument in tandem with *Scott Hudgens* v. *NLRB & Local 315, RWDSU*, No. 74-773.

Respectfully submitted,

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